

**IN THE
COMMONWEALTH OF VIRGINIA
REAL ESTATE BOARD**

In Re:

Sabra C. Whitener
Cascade, Va

File Number 2001-00108
License Number 0225035525

CONSENT ORDER NUMBER: 2002-0528

Respondent, Sabra C. Whitener ("Whitener"), was at all times material to this matter a licensed Real Estate Associate Broker in Virginia (License No. 0225035525).

As a result of this status, Whitener recognizes and acknowledges being subject to and bound by the Regulations of the Real Estate Board ("Board"), as well as by all other applicable Virginia laws.

A violation of these Regulations has been reported and investigated, and Whitener knowingly and voluntarily waives any proceedings for this matter under the Administrative Process Act, §§ 2.2-4019, 2.2-4020, and 2.2-4021 of the 1950 Code of Virginia, as amended.

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The Board's January 1999 Regulations state, in part:

18 VAC 135-20-200. Grounds for disciplinary action.

The board has the power to fine any licensee or registrant, and to suspend or revoke any license issued under the provisions of Title 54.1, Chapter 21 of the Code of Virginia, and the regulations of the board, where the licensee has been found to have violated or cooperated with others in violating any provision of Title 54.1, Chapter 21 of the Code of Virginia, Title 6.1, Chapter 1.3 of the Code of Virginia or any regulation of the board.

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ADJUDICATION

The Board's duly designated representative has found sufficient evidence to believe that:

COUNT I

On or about August 31, 1999, Tim Gordon (Gordon) entered into a Land Contract Agreement through Sabra C. Whitener, the principal broker of Piedmont Land Company, to purchase property containing 23 acres, located at Deerview Road in Pittsylvania County, Virginia, from Jeffrey and Michelle Beskin (the Beskins).

Whitener received two deposits from Gordon totaling \$2,000.00, which she placed into her firm's escrow account number 0126213812 at Virginia Bank & Trust.

Whitener did not identify the deposit holder in the terms and conditions of the contract.

Whitener's failure to include the identification of all those holding any deposits in the contract is a violation of the Board's January 1999 Regulation 18 VAC 135-20-300(7).

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COUNT II

On or about September 25, 1999, Jeffrey and Michelle Beskin entered into a Purchase Contract, through Sabra C. Whitener, the principal broker of Piedmont Land Company, to purchase 68.27 acres of property, located on Cascade Mill Road in Pittsylvania County, Virginia from Audrey M. Geraghty.

The terms and conditions of the contract show that the purchasers paid an earnest money deposit in the amount of \$2,000.00.

On July 27, 2001, Whitener told the Board's agent, Investigator E. Nathan Matthews, that the \$2,000.00 deposit was a forfeited deposit that was already being held in the escrow account by Piedmont Land Company from another Land Contract Agreement, dated August 31, 1999, between Tim Gordon, as buyer and Jeffrey and Michelle Beskin, as sellers. Whitener stated that Gordon forfeited the deposit to the Beskins when he failed to consummate the Land Contract.

Whitener did not obtain a signed release from Gordon and the Beskins for the Land Contract Agreement, dated August 31, 1999.

Whitener's failure to provide in a timely manner written notice to Gordon and the Beskins that the Land Contract Agreement was terminated, and that Gordon's

deposit was being credited to the Beskins is a violation of the Board's January 1999 Regulation 18 VAC 135-20-310(2).

COUNT III

On or about September 25, 1999, Jeffrey and Michelle Beskin entered into a Purchase Contract, through Sabra C. Whitener, the principal broker of Piedmont Land Company, to purchase 68.27 acres of property, located on Cascade Mill Road in Pittsylvania County, Virginia from Audrey M. Geraghty.

The terms and conditions of the contract show that the purchasers paid an earnest money deposit in the amount of \$2,000.00.

On August 4, 2001, a review of the records furnished by Whitener for the sales transaction, dated September 25, 1999, between Jeffrey S. and Christy Michelle Beskin and Audrey M. Geraghty, revealed the following:

On or about September 30, 1999, Whitener wrote check number 1147 on the firm's escrow account number 0126213812 at Virginia Bank & Trust, payable to herself, in the amount of \$1,500.00. Whitener made a notation on the check that it was for "Beskin." On July 27, 2001, Whitener told the Board's agent, Investigator E. Nathan Matthews, that the \$1,500.00 was part of the Beskins' \$2,000.00 deposit, and that she disbursed it to herself for personal use.

On July 27, 2001, Whitener told the Board's agent, Investigator E. Nathan Matthews, Jeffrey Beskin gave her a check in the amount of \$1,500.00 to replace the earnest money deposit on the contract, dated September 25, 1999, between Jeffrey and Christy Beskin and Audrey M. Geraghty. On February 16, 2000, Whitener deposited the \$1,500.00 into Piedmont Land Company's escrow account number 0126213812 at Virginia Bank & Trust.

Bank statements for Piedmont Land Company's escrow account number 0126213812 at Virginia Bank & Trust for the period February 2000 to July 2000 revealed that Whitener failed to maintain the Beskin's \$2,000.00 earnest money deposit in the firm's escrow account. The following is the ending monthly balances for the escrow account:

February	\$ 1,391.86
March	\$ 441.86
April	\$ 495.78
May	\$ 396.38
June	\$ 270.13
July	\$ 270.13

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On or about July 17, 2000, Whitener withdrew the ending balance in the amount of \$270.13 and closed the firm's escrow account number 0126213812.

Whitener's failure to hold the earnest money deposits in the firm's escrow account until the transaction is consummated or terminated may constitute two (2) violations of the Board's January 1999 Regulation 18 VAC135-20-180(B)(1.a).

Whitener's failure to hold escrow deposits in the firm's escrow account until the transaction is consummated or terminated may be failing to act as a real estate broker in a manner to safeguard the interests of the public, is a violation of the Board's January 1999 Regulation 18 VAC 135-20-260(8).

COUNT IV

On or about September 25, 1999, Jeffrey and Michelle Beskin entered into a Purchase Contract, through Sabra C. Whitener, the principal broker of Piedmont Land Company, to purchase 68.27 acres of property, located on Cascade Mill Road in Pittsylvania County, Virginia from Audrey M. Geraghty.

The terms and conditions of the contract show that the purchasers paid an earnest money deposit in the amount of \$2,000.00

On or about September 30, 1999, Whitener wrote check number 1147 on the firm's escrow account number 0126213812 at Virginia Bank & Trust, payable to herself, in the amount of \$1,500.00. Whitener made a notation on the check that it was for "Beskin." On July 27, 2001, Whitener told the Board's agent, Investigator E. Nathan Matthews, that the \$1,500.00 was part of the Beskins' \$2,000.00 deposit, and that she disbursed it to herself for personal use.

The principals to the sales transaction did not agree in writing that Whitener was entitled to any part of the earnest money deposit as Whitener's commission before the transaction was consummated.

Whitener's actions in disbursing part of the earnest money deposit to herself before the transaction was consummated without any agreement in writing from the principals is a violation of the Board's January 1999 Regulation 18 VAC 135-20-180(B)(2.a).

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COUNT V

On or about September 25, 1999, Jeffrey and Michelle Beskin entered into a Purchase Contract, through Sabra C. Whitener, the principal broker of Piedmont

Land Company, to purchase 68.27 acres of property, located on Cascade Mill Road in Pittsylvania County, Virginia from Audrey M. Geraghty.

The terms and conditions of the contract show that the purchasers paid an earnest money deposit in the amount of \$2,000.00.

On or about November 10, 1999, Whitener wrote check number 1042 on the firm's escrow account number 0126213812 at Virginia Bank & Trust, payable to the Pittsylvania County Health Department, in the amount of \$115.00 for a well and septic permit for the Beskins.

On or about November 22, 1999, Whitener wrote check number 1048 on the firm's escrow account number 0126213812 at Virginia Bank & Trust, payable to Roger Young, in the amount of \$450.00 as payment for the Beskins' appraisal.

The principals to the sales transaction did not agree in writing that Whitener could deduct any part of the deposit to pay for expenses incidental to closing the transaction.

Whitener's failure to obtain in writing an agreement from all principals to the transaction to deduct expenses incidental to closing a transaction from a deposit is a violation of the Board's January 1999 Regulation 18 VAC 135-20-180(B)(5).

COUNT VI

On or about September 25, 1999, Jeffrey and Michelle Beskin entered into a Purchase Contract, through Sabra C. Whitener, the principal broker of Piedmont Land Company, to purchase 68.27 acres of property, located on Cascade Mill Road in Pittsylvania County, Virginia from Audrey M. Geraghty.

The terms and conditions of the contract show that the purchasers paid an earnest money deposit in the amount of \$2,000.00.

On or about September 30, 1999, Whitener wrote check number 1147 on the firm's escrow account number 0126213812 at Virginia Bank & Trust, payable to herself, in the amount of \$1,500.00. On July 27, 2001, Whitener told the Board's agent, Investigator E. Nathan Matthews, that the \$1,500.00 was part of the Beskins' \$2,000.00 deposit, and that she disbursed it to herself for personal use.

On or about November 10, 1999, Whitener wrote check number 1042 on the firm's escrow account number 0126213812 at Virginia Bank & Trust, payable to the Pittsylvania County Health Department, in the amount of \$115.00 for a well and septic permit for the Beskins.

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On or about November 15, 1999, Whitener wrote check number 1044 on the firm's escrow account number 0126213812 at Virginia Bank & Trust, payable to the buyer, Michelle Beskin, in the amount of \$1,535.00.

Whitener disbursed the check in the amount of \$1,535.00 to Michelle Beskin when there was only \$385.00 to the credit of Beskin in the firm's escrow account.

Whitener's actions in disbursing escrow funds from the firm's escrow account without having sufficient funds on deposit to the credit of the individual client may be in violation of the Board's January 1999 Regulation 18 VAC 135-20-180(B)(4).

Whitener's failure to properly maintain funds belonging to others in the firm's escrow account may be failing to act as a real estate broker to safeguard the interests of the public, is a violation of the Board's January 1999 Regulation 18 VAC 135-20-260(8).

COUNT VII

On or about March 3, 2000, George Lewis entered into a sales contract in the amount of \$109,314.00, through Sabra Whitener, t/a Piedmont Land Company, as agent, to purchase 121.46 acres of property from Louisburg Hardwood, Inc.

On or about April 20, 2000, settlement took place.

On September 20, 2000, Whitener told the Board's agent, Investigator E. Nathan Matthews, that sometime after settlement, Lewis (the buyer) sent her a \$3,000.00 check to have the subject property surveyed. Whitener stated that she cashed Lewis' check and is currently holding the \$3,000.00 cash at her home pending the satisfactory completion of a survey she ordered.

Whitener's failure to deposit the \$3,000.00 into the firm's escrow account may be in violation of the Board's January 1999 Regulation 18 VAC 135-20-180(A)(1).

Whitener's failure to deposit the \$3,000.00 into the firm's escrow account may be failing to act as a real estate broker to safeguard the interests of the public is a violation of the Board's January 1999 Regulation 18 VAC 135-20-260(8).

COUNT VIII

Piedmont Realty Company maintained an escrow account number 0126213812 at Virginia Bank & Trust titled as, Piedmont Land Company Escrow Account.

The checks written on this account are not labeled "escrow".

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Whitener, as the principal broker of Piedmont Land Company with escrow account authority, is responsible for the firm's escrow account.

Whitener's failure to ensure that the checks written on the firm's escrow account are labeled "escrow" is a violation of the Board's January 1999 Regulation 18 VAC 135-20-180(A)(1).

The actions outlined above violate the following Board Regulations and/or Statutes:

JANUARY 1999

18 VAC 135-20-180 Maintenance and management of escrow accounts and financial records.

A. Maintenance of escrow accounts.

1. If money is to be held in escrow, each firm or sole proprietorship shall maintain in the name by which it is licensed one or more federally insured separate escrow accounts in a federally insured depository in Virginia into which all down payments, earnest money deposits, money received upon final settlement, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's client or expended on behalf of the client, or other escrow funds received by him or his associates on behalf of his client or any other person shall be deposited unless all principals to the transaction have agreed otherwise in writing. The principal broker shall be held responsible for these accounts. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts. All such accounts, checks and bank statements shall be labeled "escrow" and the account(s) shall be designated as "escrow" accounts with the financial institution where such accounts are established.

B. Disbursement of funds from escrow accounts.

- 1.a. Purchase transactions. Upon the ratification of a contract, earnest money deposits and down payments received by the principal broker or supervising broker or his associates must be placed in an escrow account by the end of the fifth business banking day following ratification, ~~unless otherwise~~

agreed to in writing, and shall remain in that account until the transaction has been consummated or terminated. In the event the transaction is not consummated, the principal broker or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in writing as to their disposition, or (ii) a court of competent jurisdiction orders such disbursement of the funds, or (iii) the broker can pay the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract which established the deposit. In the latter event, prior to disbursement, the broker shall give written notice to each principal to the transaction by either (i) hand delivery receipted for by the addressee, or (ii) by regular and certified mail, that this payment will be made unless a written protest from that principal to the transaction is received by the broker within 30 days of the delivery or mailing, as appropriate, of that notice. A broker who has carried out the above procedure shall be construed to have fulfilled the requirements of this chapter.

...

- 2.a. Purchase transactions. Unless otherwise agreed in writing by all principals to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.

...

5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction, e.g., fees for appraisal, insurance, credit report, etc., shall not be deducted from a deposit or down payment.

18 VAC 135-20-260. Unworthiness and incompetence.

Actions constituting unworthy and incompetent conduct include:

8. Failing to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public.

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18 VAC 135-20-300. Misrepresentation/omission.

Actions constituting misrepresentation or omission, or both, include:

7. Failing to include in any application, lease, or offer to purchase identification of all those holding any deposits.

18 VAC 135-20-310. Delivery of instruments.

Actions constituting improper delivery of instruments include:

2. Failing to provide in a timely manner to all principals to the transaction written notice of any material changes to the transaction.

By signing this Consent Order, Whitener acknowledges an understanding of the charges. Whitener neither admits or denies the violations of the Board's Regulations but consents to the following term(s) by the Board:

On Count I, for violation of the Board's January 1999 Regulation 18 VAC 135-20-300(7); on Count II, for violation of the Board's January 1999 Regulation 18 VAC 135-20-310(2); on Count III, for violation of the Board's January 1999 Regulation 18 VAC 135-20-260(8); on Count IV for violation of the Board's January 1999 Regulation 18 VAC 135-20-180(B)(2.a); on Count V for violation of the Board's January 1999 Regulation 18 VAC 135-20-180(B)(5); on Count VI for violation of the Board's January 1999 Regulation 18 VAC 135-20-260(8); on Count VII for violation of the Board's January 1999 Regulation 18 VAC 135-20-260(8); and on Count VIII for violation of the Board's January 1999 Regulation 18 VAC 135-20-180(A)(1).

Whitener agrees to the voluntary revocation of her Real Estate Associate Broker's License.

Whitener acknowledges that failure to pay the penalty, the costs, or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Whitener's license until such time as there is compliance with all terms of this Order. Whitener understands the right to have this automatic suspension considered in an informal conference pursuant to the Administrative Process Act §§ 2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§ 2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

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SEEN AND AGREED TO:

Sabra C. Whitener
Sabra C. Whitener

7/11/02
Date

SABRA C. WHITENER
Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF Danville
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this 11th day of July,
2002.

Theresa L. Soffert
Notary Public

My Commission Expires: 1-31-03

SO ORDERED:

Entered this 12th day of September, 2002.

Real Estate Board

BY:

Joseph K. Furkhouser, II

COPY TESTE:

Custodian of the Records

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